BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

"Selection of Service Provider for Sale of Smart Meters to prospective consumers on rate contract basis in retail outlets for arranging power supply to new connections (including temporary installations) along with Supply, Implementation, Commissioning of IT system for a period of 5 years & Maintenance of IT system for a period of 10 years in BESCOM Jurisdiction." vide Tender Enquiry No. BESCOM/2024-25/SE0193

Special Conditions of Contract (SCC)

1. Liquidated Damages and Penalty

BESCOM shall without prejudice to all its other remedies under the Contract, deduct from the amount due to be paid, as liquidated damages, 50% of SP Service Charge for each delayed meter for each completed month of delay for a maximum period of 12 (twelve) months.

The SP shall be liable to penalties in the event of non-compliance of Service Level Agreements as specified in Annexure F.

A designated team/ person from BESCOM may review the system generated SLA performance report of SP each month. The review/ audit report will form basis of any action relating to imposing penalty on or breach of Contract of the SP.

2. Exit Management

The SP and the Officer from BESCOM will sign a completion certificate at the end of successful completion (all points tracked to closure) of the Exit Management Plan.

In case the Contract with the BESCOM ends or is terminated before the expiry date of Contracts, the Parties shall agree at that time whether, and if so during what period, the provisions of this Exit Management Plan shall apply. The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management Plan. The exit management shall be done in such a manner that operations should continue without any restriction on access/usage of any kind of functionality. At the end of the Contract period, SP shall provide necessary handholding and transition support to the BESCOM or its agency for maintaining the system post the Contract with the SP. This includes (but not limited to):

a) Conducting detailed walkthrough and demonstrations for the AMI Solution;

b) Handing over of AMI Solution, BESCOM's data and all other relevant documentation including updated detailed bill of quantities for materials and services provided under the Contract;

c) Addressing the queries/clarifications of the designated staff / new agency with respect to the working / performance levels of the infrastructure;

d) Conducting training sessions;

e) Knowledge Transfer;

Any other activity, over and above these, as may be deemed necessary to meet the service levels and requirements specified in the tender documents.

3. Transfer of Assets / AMI Solutions

a) BESCOM shall be entitled to serve notice in writing on the SP at any time during the Exit Management Period requiring the SP to provide the BESCOM with a complete and up to date list of the Assets within 30 (thirty) days of such notice. BESCOM shall also be entitled to serve notice in writing on the SP at any time prior to the end of the Exit Management Period requiring the SP to transfer to the BESCOM or its nominated agencies in accordance with Termination clause.

b) In case of contract being terminated by BESCOM, BESCOM reserves the right to ask SP to continue running the project operations for a period of 3 (three) months after termination orders are issued. In case of contract being terminated by SP, BESCOM reserves the right to ask the SP to continue running the project operations for a period of 6 (six) months after termination notice is served by SP.

c) Upon service of a notice under this Plan, the following provisions shall apply:

i. All title to the assets as per the updated detailed bill of quantities for materials and services provided under the Contract shall be transferred to BESCOM, on or before the last day of the Exit Management Period.

ii. Payment to the outgoing SP shall be made to the tune of last set of completed Services / deliverables, subject to SLA requirements.

iii. Cooperation and provision of information

3.1 During the Exit Management Period:

a) SP will facilitate / allow the BESCOM or its nominated agency access to information reasonably required to define the then current mode of operation associated with the provision of the services to enable the BESCOM to assess the existing services being delivered.

b) Promptly on reasonable request by the BESCOM, the SP shall provide access to and copies of all information held or controlled by them which they have prepared or maintained in accordance with this Contract relating to any material aspect of the services to the BESCOM or its nominated agency. Such information shall include details pertaining to the list of assets as per updated detailed bill of quantities for materials and services provided under the Contract, services rendered and other performance data. SP shall permit the BESCOM or its nominated agencies to have reasonable access to its employees and facilities to understand the methods of delivery of the services employed by the SP and to assist appropriate knowledge transfer.

c) In the event of Termination prior to Installation Milestone, SP and BESCOM shall jointly appoint an Independent Valuer to certify the value of assets, as per the updated detailed bill of quantities for materials and services provided under the Contract, proposed to be handed over to the

BESCOM upon termination. The cost of Independent Valuer shall be paid by the SP.

4. Confidential information, security and data

SP shall promptly on the commencement of the Exit Management Period supply to the BESCOM or its nominated agency the following:

a. information relating to the list of assets as per the updated detailed bill of quantities for materials and services provided under the Contract, current Services rendered and consumer and performance data relating to the performance of SP in relation to the Services;

b. documentation relating to the Project's Intellectual Property Rights;

c. all current and updated data as is reasonably required for purposes of BESCOM or its nominated agencies transitioning the services in a readily available format;

d. all other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable BESCOM or its nominated agencies, to carry out due diligence in order to transition the provision of the Services to BESCOM or its nominated agencies, (as the case may be).

5. Transfer of certain agreements

On request by the BESCOM or its nominated agency, the SP shall affect such assignments, licenses and sub-licenses as BESCOM may require in favor of the BESCOM or its nominated agency reasonably necessary for the carrying out of replacement services. These agreements may include equipment lease, maintenance or service provision agreement between selected SP and third-party lessors, service providers, and any other agreements related to the Services.

General obligations of the SP during exit management period

a. The SP shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to the BESCOM or its nominated agency and which the SP has in its possession or control at any time during the Exit Management Period.

b. For the purposes of this Schedule, anything in the possession or control of the SP is deemed to be in the possession or control of the SP.

c. The SP shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

6. **Exit management process**

The SP shall prepare an Exit Management Plan for transfer of operations to the BESCOM or its nominated agency, in the event of termination or expiry of the contract with the BESCOM, without affecting services to stakeholders adversely. SP shall get this process approved by BESCOM. The Plan shall include, but not be limited to, the following-

a. A detailed program of the transfer process including details of the means to be used to ensure continuing provision of the Services throughout the

transfer process or until the cessation of the Services and of the management structure to be used during the transfer;

b. Plans for the communication with such of the SP's subcontractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the BESCOM's project operations and AMI Services to other stakeholders as a result of undertaking the transfer;
c. Plans for provision of contingent support to BESCOM or its nominated Agency for a reasonable period after transfer.
d. The Exit Management Plan including all updates shall be presented by the SP to and approved by the BESCOM or its nominated agencies.
e. During the Exit Management Period, the SP shall use its best efforts to deliver the services.
f. The Exit Management plan shall be furnished in writing to the BESCOM or its nominated agencies within 90(ninety) days from date of execution this SP contract

The SP shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date. The updated plan shall be furnished in writing to the BESCOM or its nominated agencies within 15 days from the end of such period.

7. Liability/ Indemnity

- The SP hereby agrees to indemnify BESCOM, for all conditions and situations mentioned in this Article, in a form and manner acceptable to BESCOM. The SP agrees to indemnify BESCOM and its officers, servants, agents ("BESCOM Indemnified Persons") from and against any costs, loss, damages, expense, claims including those from third parties or liabilities of any kind howsoever suffered, arising or incurred inter alia during and after the Contract Period out of:

a) any negligence or wrongful act or omission by the SP or its agents or employees or any third Party associated with SP in connection with or incidental to this Contract; or

b) any infringement of patent, trademark/copyright or industrial design rights arising from the use of the supplied Solution or any part thereof.

- The SP shall also indemnify BESCOM against any privilege, claim or assertion made by third party with respect to right or interest in, ownership, mortgage or disposal of any asset, property, movable or immovable as mentioned in any Intellectual Property Rights, licenses and permits.
- Without limiting the generality of the provisions, the SP shall fully indemnify, hold harmless and defend BESCOM Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which BESCOM Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to the

Solution, information, design or process supplied or used by the SP in performing the SP's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the SP shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Solution or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the SP shall promptly make every reasonable effort to secure for the BESCOM a license, at no cost to BESCOM, authorizing continued use of the infringing work. If the SP is unable to secure such license within a reasonable time, the SP shall, at its own expense, and without impairing the specifications and standards, either replace the affected work, or part, or process thereof.

The Service Provider shall indemnify BESCOM for all the Disputes arising out of internal tie-ups with the solution providers. It shall not be the responsibility of BESCOM. SP should extend hazzle free service to BESCOM during such cases.

8. Insurance

The Goods supplied under the Contract shall be fully insured by the SP against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery.

The SP shall furnish to the BESCOM copies of certificates and policies of the Insurances as soon as they are affected and renewed by or on behalf of the SP from time to time.

9. Transportation

- The SP shall at its own risk and expense transport all the SP's equipment to the site by the mode of transport that the SP judges most suitable under all the circumstances.
- Unless otherwise provided in the Contract, the SP shall be entitled to select any safe mode of transport operated by any person to carry the SP's equipment.
- The SP shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the SP's equipment to the Project site. BESCOM shall use its best endeavours in a timely and expeditious manner to assist the SP in obtaining such approvals, if requested by the SP.

10. Confidential Information

- Both SP and the BESCOM undertake to each other to keep confidential all information (written as well as oral) concerning the business and affairs of the other, which has been obtained or received as a result of the discussions leading up to or the entering of the Contract.

- After the entering of the Contract, the BESCOM and the SP shall keep confidential and shall not, without the written consent of the other Party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other Party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the SP may furnish to its subcontractors such documents, data, and other information it receives from the BESCOM to the extent required for the subcontractors to perform its work under the Contract, in which event the SP shall obtain from such subcontractors an undertaking of confidentiality similar to that imposed on the SP under this clause.

- The BESCOM shall not use such documents, data, and other information received from the SP for any purposes unrelated to the Contract. Similarly, the SP shall not use such documents, data, and other information received from the BESCOM for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.

- The obligation of a Party under Clause 10 above, however, shall not apply to information that:

    a. BESCOM or SP need to share with the institutions participating in the financing of the Contract;
    b. now or hereafter enters the public domain through no fault of that Party;
    c. can be proven to have been possessed by that Party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other Party; or
    d. Otherwise lawfully becomes available to that Party from a third Party that has no obligation of confidentiality.

- The above provisions of this clause 10 shall not in any way modify any undertaking of confidentiality given by either of the Parties hereto prior to the date of execution of the Contract in respect of the Supply or any part thereof.

- Each of the Parties to this Contract, undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of the above clauses by its employees, agents and sub-contractors.

- The provisions of this clause 10 survive completion or termination, for whatever reason, of the Contract.

11. **Warranty**

The SP warrants that all the Goods that would be used as part of Solution would be new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
The SP further warrants that the Goods shall be free from defects arising from any act or omission of the SP or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
The warranty of the AMI system shall remain valid till expiry of the Contract Period.
The SP shall be responsible for comprehensive maintenance of all the equipment and systems supplied & installed under this Contract during the Operational Period. There may be some variation during detailed engineering. SP will have to make their own assessment of the systems and deploy manpower accordingly. However, it is to be ensured that specified manpower of requisite qualification is deployed.

The maintenance of the system supplied & installed by the SP shall be comprehensive. The SP shall be responsible for providing all the spares as may be required. The spares shall be maintained by the SP at no extra cost to the BESCOM.

At the end of the contract or at the time of transfer in case of termination, the meters shall have a warranty of five years from their installation**.**

12. Arbitration:

- All disputes or differences in respect of which the decision, if any, of the Service Provider and/or BESCOM has not become final or binding as aforesaid shall be settled by arbitration in the manner provided herein below:
- The arbitration shall be conducted by three arbitrators, one each to be nominated by the Service Provider and BESCOM and the third to be appointed by both the arbitrators in accordance with the Indian Arbitration Act. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking the Arbitration clause, the arbitrator appointed by the party invoking the arbitration clause shall become the sole arbitrator to conduct the arbitration.
- The language of the arbitration proceedings and that of the documents and communications between the parties shall be English. The

arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof. The venue of arbitration shall be Bengaluru.

- The decision of the majority of the arbitrators shall be final and binding upon the parties. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the party concerned to nominate another arbitrator in place of the outgoing arbitrator.
- During settlement of disputes and arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the the Contract.

13. Special Purpose Vehicle:

"Special Purpose Vehicle" or "SPV" shall mean a company incorporated under Companies Act, 2013 for the purpose of executing the Project as set out in Detailed Scope of Work;

The SPV incorporated shall sign the contract agreement along with the Selected Bidder.

Incorporation of a Special Purpose Vehicle (SPV) by the Selected Bidder for project implementation would be optional.

Sd/-

General Manager Ele.,
DAS, SG & TIC
BESCOM.

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